

810 KAR 1:037. Licensing of racing associations conducting thoroughbred racing.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300 authorizes the Kentucky Horse Racing Commission to issue licenses to conduct race meetings. This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

(2) "Principals" is defined by KRS 230.210(17).

(3) "Publicly traded corporation" means a corporation that:

(a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;

(b) Issues securities subject to Section 15(d) of the 1934 Act;

(c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or

(d) Is required to file under the 1934 Act.

(4) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

Section 2. License Applications for Associations. (1) New license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering".

(4) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.300(9), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants.

(a) As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of \$10,000.

(b) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial license application or within twenty (20) days of the granting of the license.

(c) To the extent additional costs are incurred, the applicant shall submit a cashier's check

or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request.

(d) Failure to submit an additional requested payment shall result in suspension of the investigation or suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for an initial license shall also pay a licensing fee. The applicant shall submit, along with the license application, a cashier's check or certified check payable to the commission in the amount of \$5,000. This fee shall be nonrefundable.

(3) Renewal applications. The commission shall not charge costs or fees for the renewal of racing association licenses.

Section 4. Licensing Criteria. (1) The commission shall issue a license if the commission determines that, on the basis of all the facts before it:

(a) The applicant meets all of the requirements under KRS Chapter 230, including KRS 230.280 and 230.300;

(b) The applicant meets all of the requirements of this administrative regulation;

(c) The applicant is qualified and financially capable to operate a race track;

(d) Racing meetings at the race track will be operated in accordance with KRS Chapter 230 and 810 KAR Chapter 1;

(e) Racing will be conducted by the applicant in accordance with the highest standards and the greatest level of integrity; and

(f) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals;

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations;

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in

Kentucky;

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to initial and renewal license applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks. Factors to be considered shall include the following:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and 810 KAR Chapter 1;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Oral Presentation by Applicant. (1) An applicant for a license may make an oral presentation of its application to the commission prior to the ruling on the application.

(a) The presentation shall be made by an applicant during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) The commission may require an applicant to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

(3) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 7. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue a license, including:

(a) Copies of any documents used by the applicant in preparing the application; and

(b) Contracts between the applicant and third parties related to operations.

(2) The request may be made before or after the oral presentation.

Section 8. Transfers of Licenses. (1) A license issued under KRS 230.300 and this administrative regulation is neither transferable nor assignable and is only applicable to the location for which the license is issued.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Kentucky Horse Racing Commission Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership shall be based.

(4) For purposes of subsection (3), notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless the transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Material Modification, Expansion or Reduction of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility, whether a final or conditional license in accordance with KRS 230.290, without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Delay in Completion of Racing Facility. (1) Except as provided by subsection (3) of this section, a licensee may be subject to a late fee not to exceed \$15,000 a day for every day the licensee fails to conduct racing after the commencement date specified in the license.

(2) The amount of the fee shall be determined based on the economic impact caused by the licensee's failure to perform.

(3) The late fee required by subsection (1) of this section shall not be imposed for any particular day if the licensee can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors, such as:

(a) Acts of God or enemies of the United States;

(b) Acts of government in either its sovereign or contractual capacity;

(c) Fires;

(d) Floods;

(e) Epidemics;

(f) Quarantine restrictions;

(g) Strikes;

(h) Freight embargoes; and

(i) Unusually severe weather.

(3) If the cause of delay is the default of a contractor or subcontractor, and if the licensee proves to the satisfaction of the commission that the default arose out of causes beyond the

control of the licensee, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 37-01, 3/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 37-02, 7/10.

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